

U.S. Army Corps of Engineers

Tulloch Ruling Stayed

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS, DISTRICT
COMMANDS

SUBJECT: American Mining Congress v. Corps of Engineers

1. On 25 June 1997, the U.S. Circuit Court for the District of Columbia granted a stay of the District Court decision in the subject lawsuit. Therefore, the "Excavation Rule" at [33 CFR 323.2\(d\)](#) is in effect and should be fully implemented. Furthermore, the 11 April 1997, joint guidance concerning compliance with the District Court's decision on this lawsuit is no longer in effect. However, your attention is directed to paragraph 4 "ENFORCEMENT ACTIONS" of the joint guidance. You should not initiate enforcement actions for any activities that only involved "incidental fall back" (as addressed in the 11 April 1997 guidance) that occurred between 23 January 1997, and 25 June 1997. If there are questions concerning the applicability of this ruling, you should contact this office prior to initiating an enforcement action.
2. The Circuit Court also granted the motion for expedited decision on the appeal. They established a schedule that requires that final briefs be completed by 19 November 1997. Therefore, we would expect that a decision on the lawsuit should be made in early 1998.
3. No decision on the need for further guidance has been made. Questions or comments should be directed to Sam Collinson, CECW-OR, at (202) 761-0199.

/s/

JOHN F. STUDT
Chief, Regulatory Branch
Operations, Construction, and Readiness Division
Directorate of Civil Works